

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BYRON BAREFIELD
Plaintiff,

VS.

DIAMOND STATE INSURANCE
COMPANY
Defendant.

§
§
§
§
§
§
§
§

CASE NO. 4:15-cv-00891

NOTICE OF REMOVAL

Defendant Diamond State Insurance Company (“Diamond”), while fully reserving all rights and defenses, files this Notice of Removal to the United States District Court for the Southern District of Texas - Houston Division. Removal is proper under 28 U.S.C. § § 1332 and 1441(a) because this is an action over which the United States District Court for the Southern District of Texas - Houston Division has original diversity jurisdiction as it is an action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs. In support of its Notice of Removal, Diamond represents as follows:

I.

BACKGROUND

1. Plaintiff commenced a civil action styled, *Bryon Barefield vs. Diamond State Insurance Company* and assigned Cause No. 2015-12483 in the 133rd Judicial District Court in Harris County, Texas, by filing suit on or about March 4, 2015.¹ Plaintiff’s Original Petition will be referred to as the “Complaint” hereinafter.

¹ See *Plaintiff’s Original Petition*, a true and correct copy of which is attached as Exhibit 1.

2. This is an insurance coverage dispute. Specifically, Plaintiff seeks a declaration that he is entitled to underinsured motorist benefits under an insurance policy issued by Diamond.

3. Diamond has not made an appearance in the state court action and this notice is filed within 30 days of Diamond's first receipt of the initial pleading in this matter. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served upon Diamond are attached.

4. The name and address of the court from which the case is being removed is:

Harris County 133rd Judicial District Court
201 Caroline Street
Houston, Texas 77002

II.

REMOVAL PROCEDURES / DOCUMENTS ATTACHED

5. The following documents are attached to this Notice of Removal:

Exhibit "1" Plaintiff's Original Petition.

Exhibit "2" Return of Service.

Exhibit "3" Affidavit of Stephen W. Ries.

Exhibit "4" An index of matters being filed, copy of the state court Docket Sheet / Record, copies of all process, and a list of all counsel of record.

III.

TIMING OF REMOVAL

6. This Notice of Removal is filed within thirty (30) days of service of the lawsuit upon Diamond and is therefore timely under 28 U.S.C. § 1446(b).²

² See *Return of Service*, a true and correct copy of which is attached as Exhibit 2.

IV.

JURISDICTION

7. Pursuant to 28 U.S.C. § 1332, a defendant has a right to remove a case to federal court if the case involves a dispute between completely diverse parties and the amount in controversy, excluding interests and costs, exceeds \$75,000.00.

8. Plaintiff has asserted that he seeks damages in excess of \$200,000 but not more than \$1,000,000.³ Based on the allegations in Plaintiff's Complaint, this matter is removable to this Court pursuant to 28 U.S.C. § 1332 because the amount in controversy, excluding interests and costs, exceeds \$75,000.00.

9. Plaintiff alleges in the Complaint that he is a resident of Texas.⁴

10. Diamond is a corporation organized and existing under the laws of the State of Indiana with its principal office and place of business in Pennsylvania.⁵

11. Accordingly, there exists complete diversity of citizenship between Diamond and Plaintiff pursuant to 28 U.S.C. § 1332.

V.

VENUE

12. Pursuant to 28 U.S.C. § 1441(a), venue for this action is proper in the United States District Court for the Southern District of Texas – Houston Division as it is the federal judicial district that encompasses the 133rd Judicial District Court Harris County, Texas, where the state action was originally filed.

³ See Ex. 1 at p. 1.

⁴ See Ex. 1 at p. 1.

⁵ See *Affidavit of Stephen W. Ries*, a true and correct copy of which is attached as Exhibit 3.

VI.

ANSWER

13. Diamond has not filed any responsive pleadings in the state court action. By removing this action to this Court, Diamond does not waive any defenses, objections or motions available to it under state or federal law. Diamond will file its responsive pleading to Plaintiff's lawsuit in the near future.

VII.

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

14. As the removing party, Diamond will give Plaintiff prompt written notice of this Notice of Removal as required by 28 U.S.C. § 1446(d).

15. Diamond will also file a copy of this Notice of Removal with the 133rd Judicial District Court Harris County, Texas, where the state court action is currently pending, as required by 28 U.S.C. § 1446(d).

16. Diamond respectfully reserves the right to amend or supplement this Notice of Removal. Diamond also respectfully reserves the right to submit additional evidence in support of this Notice of Removal should Plaintiff move to remand this action to state court.

17. Pursuant to 28 U.S.C. § 1446(d) and Rule 81 of the Local Rules of District Court, copies of all process, pleadings, orders and docket entries from the state court file, an index of matters being filed and a list of all counsel of records are attached collectively as Exhibit 4.

VIII.

JURY DEMAND

18. Diamond hereby requests a trial by jury pursuant to Fed. R. Civ. P. 38.

IX.

PRAYER

19. For these reasons and in conformity with 28 U.S.C. § 1446, Diamond respectfully gives notice that this action is removed from the 133rd Judicial District Court in Harris County, Texas to the United States District Court for the Southern District of Texas – Houston Division. Diamond prays for such other and further relief, both general and special, at law and in equity, to which Diamond may show itself justly entitled.

Respectfully submitted,

/s/Adraon D. Greene

Thomas J. Smith

Federal I.D. No. 23773

State Bar No. 00788934

Adraon D. Greene

Federal I.D. No. 25029

State Bar No. 24014533

Corey L. Wyatt

Federal I.D. No. 7740

State Bar No. 24077860

OF COUNSEL:

GALLOWAY, JOHNSON, TOMPKINS

BURR & SMITH

1301 McKinney Suite 1400

Houston, Texas 77010

(713) 599-0700 – Telephone

(713) 599-0777 – Facsimile

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on the following via electronic filing, facsimile, and/or U.S. Mail, return receipt requested on this the 6th day of April, 2015:

Via CMRRR

Frank W. Robertson
Jim. S. Adler & Associates
12605 East Freeway, Suite 400
Houston, Texas 77015

/s/ Corey L. Wyatt

Thomas J. Smith
Adraon D. Greene
Corey L. Wyatt